

Indiana Department of State Revenue

Revenue Ruling # 2006-03ST

July 24, 2006

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ISSUES

Sales/Use Tax - Biodiesel Tax Credits

Authority: 6-3.1-27; IC 6-2.5-6-1; IC 6-2.5-7-9

Taxpayer requests the Department to rule on two issues:

Issue # 1:

Whether it may take a credit for the production, blending and retail sale of biodiesel provided under IC 6-3.1-27 against the sales tax collected as a retail merchant pursuant to 6-2.5.

Issue # 2

The taxpayer further inquires whether the tax credits for the blending and retail sale of biodiesel may be taken against the prepayment of the state gross retail tax on motor fuel required under IC 6-2.5-7-9.

STATEMENT OF FACTS

The taxpayer is an Illinois Corporation that is authorized to do business in the state. As a component of its business, the taxpayer operates a number of retail truck stops as a retail merchant throughout the state. Additionally the taxpayer is also the distributor and blender of the motor fuels that are sold at these retail locations. The taxpayer maintains the following licenses:

- Retail Merchant Certificate through the Indiana Dept. of Revenue
- Distributors License through the Indiana Dept. of Revenue
- Exporters License through the Indiana Dept. of Revenue
- Blender License – Alcohol through the Indiana Dept. of Revenue

The taxpayer has also applied for the following licenses:

- Blender License – Special Fuels through the Indiana Dept. of Revenue
- Blender License – Special Fuels through the Indiana Dept. of Agriculture

If the taxpayer receives the two additional licenses for which it has applied, the taxpayer intends to blend biodiesel fuel in the state for retail at its Indiana locations.

DISCUSSION

The following credits are provided under IC 6-3.1-27:

IC 6-3.1-27-9

Blended biodiesel production credit

(a) Subject to section 9.5 of this chapter, a taxpayer that has been certified by the corporation as eligible for a credit under this section and produces blended biodiesel at a facility located in Indiana is entitled to a credit against the taxpayer's state tax liability equal to the product of:

- (1) two cents (\$0.02); multiplied by
- (2) the number of gallons of blended biodiesel:
 - (A) produced at the Indiana facility; and
 - (B) blended with biodiesel produced at a facility located in Indiana.

(b) The total amount of credits allowed a taxpayer (or, if the person producing the blended biodiesel is a pass through entity, the shareholders, partners, or members of the pass through entity) under this section may not exceed three million dollars (\$3,000,000) for all taxable years.

IC 6-3.1-27-10

Credit for sale of blended biodiesel

(a) A taxpayer that:

- (1) is a dealer; and
- (2) distributes at retail blended biodiesel in a taxable year;

is entitled to a credit against the taxpayer's state tax liability.

(b) The amount of the credit allowed under this section is the product of:

- (1) one cent (\$0.01); multiplied by
- (2) the total number of gallons of blended biodiesel distributed at retail by the taxpayer in a taxable year.

(c) The total amount of credits allowed under this section may not exceed one million dollars (\$1,000,000) for all taxpayers and all taxable years.

(d) A credit under this section may not be taken for blended biodiesel distributed at retail after December 31, 2006.

Furthermore IC 6-3.1-27-6 defines "state tax liability" as meaning a taxpayer's total tax liability that is incurred under:

- (1) IC 6-2.5 (the state gross retail and use tax);
- (2) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- (3) IC 6-5.5 (the financial institutions tax); and
- (4) IC 27-1-18-2 (the insurance premiums tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Issue # 1

The Department has interpreted that the two credits provided under IC 6-3.1-27 are not applicable against the sales tax collected as a retail merchant. Stating in section E of the State Form BD-100, "Biodiesel Tax Credits Application: A taxpayer may not take a credit against

sales tax collected as a retail merchant...” The Department’s interpretation is further clarified in Information Bulletin # 91 which states in pertinent part: “A taxpayer may not take a credit against sales tax collected as a retail merchant, but may take a credit against the use tax due on the taxpayer’s taxable purchases.

IC 6-2.5-2-1 subsection (b) states: The person who acquires the property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. *The retail merchant shall collect the tax as an agent for the state.* (emphasis added).

Furthermore, IC 6-2.5-6-1 states in pertinent part “Each person *liable for collecting* the state gross retail or use tax shall file a return for each calendar month and pay the state gross retail and use taxes that the person collects during that month.” (emphasis added).

IC 6-2.5-6-7 would seem to conflict with the previous statutes in subsection (2) stating “The amount determined under this section is the retail merchant’s state gross retail and use tax liability regardless of the amount actually collected.” However, the Department’s interpretation of the sections is that the retail merchant is not liable for the tax per se, it is liable for collecting the tax and in the event that it fails to collect the tax it then becomes liable for the entire amount of the tax.

Consequently, the amounts collected as a retail merchant are not included within the meaning of a taxpayer’s tax liability due to the fact that the retail merchant is not liable for the gross retail and use tax per se unless the retail merchant fails to collect the gross retail and use tax.

Issue # 2

Because the Department’s Interpretation of IC 6-3.1-27 in issue # 1 (not allowing the tax credits provided therein to be credited against the sales tax collected from a retail merchant) the tax credits provided also cannot be used against the prepayment of the state gross retail tax on motor fuel required under IC 6-2.5-7-9.

RULING

Because the retail merchant is not liable for the state gross retail tax, and because the gross state retail tax is not included in the taxpayer’s tax liability, the taxpayer may not take a credit for the production, blending and retail sale of biodiesel provided under IC 6-3.1-27 against the sales tax collected as a retail merchant pursuant to IC 6-2.5. Nor may the taxpayer apply the tax credits provided within IC 6-3.1-27 against the prepayment of the state gross retail tax on motor fuel required under IC 6-3.5-7-9.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer’s facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational

purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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